THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.NO.12745 OF 2000

Dated:13-9-2007

Between:

1.Syed Rafiuddin
and others … Petitioners

and

1.The Sub-Inspector of Police
and another … Respondents

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.12745 of 2000

O R D E R:

On the basis of a report given by the Deputy General Manager (Administration), Telecom District, Karimnagar, alleging that it has come to light, during the review of the telephone dues which are outstanding, 16 persons mentioned therein were making NSD/STD calls via Tekulapally of Khammam District with 08741 code to various destinations within or outside the country by manipulating telephone facilities provided to them so that minimum charges from Karimnagar to Tekulapally only instead of ISD billing, get billed which caused a loss of more than Rs.12,00,000/- to the exchequer, the Station House Officer, I Town Police Station, Karimnagar registered a case in Crime No.180 of 2000 under Sections 406, 417 and 420 IPC against the persons mentioned therein, including the petitioners.

2. This petition is filed to quash the said FIR alleging that inasmuch as the Indian Telegraph Act, 1885 (the 'Act'), or the rules made thereunder or any order or notification issued by the authorities of the Telephone Department do not prohibit telephone subscribers making calls by using the code No.08741 from their telephones, petitioners making calls by using of code No.08741 from their telephones is not and cannot be an offence. In any

event as the Telephone Department generates bills through a computer, the fault, if any, in the billing can be due to a computer fault or for some other reasons, in which petitioners have no role to play. The above apart as disputes relating faulty billing have to be referred to arbitration under Section 7(B) of the Act, department can refer the matter to arbitration. Moreover as Sections 406, 417 and 420 IPC do not cover cases relating to a telephone subscriber getting bills for smaller amounts than that may be due from him and as the necessary ingredients for taking cognizance of the offences under Sections 406, 417 and 420 IPC are not found in the report given by the Deputy Manager (Administration), Telecom District, Karimnagar, the First Information Report registered against the petitioners is liable to be quashed.

3. On behalf of the respondents first respondent filed his counter-affidavit *inter alia* contending that on 07.07.2000 second respondent gave a complaint alleging that the petitioners and others had, in connivance with some of the employees in the Telegraph Department, manipulated the telephone facilities provided to them to get low billings than that are actually due and payable by them and as there is prima facie evidence of misuse of the telephones by the petitioners they are not entitled to any relief.

4. The point for consideration is whether there are grounds to quash the F.I.R.?

5. The contention of Sri M.A.Bari, learned counsel for petitioners is that inasmuch as the Act is a self-contained code and as Section 7B thereof provides for the disputes relating to billing etc. being referred to arbitration, no criminality can be inferred in matters relating to low or high billing. By relying on B.RAMACHANDRA REDDY v THE UNION OF INDIA AND OTHERS[1]

where it is held that in cases relating to misuse of telephone the proper procedure is to refer the matter to arbitration by invoking Section 7(b) of the Act, he contended that remedy if any of the telephone department is to seek arbitration, but not lodging a report to police. His next contention is that inasmuch as offences relating to wireless and telegraph as per Section 20(2) of the Act are made bailable and non-cognizable for the purpose of Code of Criminal Procedure, registration of a crime against the petitioners without permission from the Magistrate, in respect of the offences under the Act, is improper. His next contention is that inasmuch as the Act itself prescribes punishment for misuse of telephones, registration of a crime under the provisions of IPC is improper by reling on SYED AZHER HUSSAIN AND OTHERS v IQBAL AHMED KHAN[2], where it is held that Mutawalli's failure to furnish accounts to new office bearers, on expiry of his term does not constitute an offence under Section 406, 417 and 477-A IPC, inasmuch as the Wakf Act, 1995 contains the procedure to be followed in such cases, ANADER SHAREEF v STATE OF A.P.[3] where it is held that theft of electric energy is not an offence punishable under Section 379 IPC, as it is made an offence under Section 39 of the Indian Electricity Act, and also on MALLADI SEETHARAMA SASTRY v NAGANATH KAWLWAR AND SONS[4].

6. The contention of the learned Government Pleader is that inasmuch as 16 persons including the petitioners, in collusion with the members of the staff of the telephone Department, by tampering with the equipment in the telephone exchange, to enabled those 16 persons to make overseas calls by recording them as local calls, were getting bills for lesser amounts than that

are actually due it is clear that petitioners and others played fraud or cheated the telephone department. It is his contention that the employees of the department who colluded with petitioners and others were kept under suspension and disciplinary proceedings were initiated against them and inasmuch as the 'telephones' installed in the premises of the petitioners are the property of the telephone department, and as the subscribers of the telephones, as custodians thereof have to use them properly and cannot tamper with them, any improper use of any telephone by any subscriber, with a dishonest intention, would amount to criminal breach of trust and cheating, and as there is prima facie evidence relating to commission of offences under Sections 406, 417 and 420 IPC by the petitioners, there are no grounds to quash the First Information Report against the petitioners. His next contention is that offences punishable under the Act are detailed in Part IV thereof and as to establishing, maintaining or giving of unauthorized telegraph only are made bailable and non-cognizable by Section 20(2) of the Act it is clear that the offences enumerated in the other sections of Part IV of the Act are not governed by Section 20(2) of the Act, and since the Act does not exclude operation of the provisions in IPC with regard to misuse of telephone any acts committed by a subscriber, if such acts fall within the purview of any of the sections of IPC, there can be no impediment for the police taking cognizance of the such non-bailable offences under IPC, and inasmuch as the averments in the report given to the police disclose that the petitioners and others, in collusion with the members of the staff of Telecom Department, manipulated the equipment in the exchange with a view to get lesser billing there is prima facie case relating to breach of trust and cheating, and as the truth or falsehood of those facts have to be investigated into by the

police, petitioners are not entitled to any relief in this case.

7. Before adverting to the merits of contentions raised, I feel it appropriate to refer to the decisions relied on by the learned counsel for the petitioners. B.RAMACHANDRA REDDY's case (1 supra), relied on by the learned counsel for the petitioners is not much of help in deciding this petition, because the facts therein are entirely different from the facts of the case. That case relates to disconnection of a telephone, on the ground of the subscriber making free calls in collusion with the employees of the department, without giving an opportunity of being heard to the subscriber. Questioning the said disconnection the subscriber filed the writ petition. In the circumstances of that case, the learned Judge directed the authorities of the telephone department to take steps for initiation of arbitration proceedings under Section 7(B) of the Act for determinant of the amount due from the subscriber. Question relating to initiation of criminal proceedings was not considered in that case. More over when an act committed by a person gives raise to civil and criminal liability, the fact that the aggrieved person has a civil remedy does not prevent the aggrieved person taking recourse to criminal proceedings.

8. In SYED AZHER HUSSAIN AND OTHERS CASE (2 supra), the new office bearers of a Wakf lodged a complaint under Sections 406, 417 and 477-A IPC against the old office bearers for their failure to deliver the accounts of the Wakf to them. The old office bearers filed a petition under Section 482 Cr.P.C. in the High Court to quash the FIR alleging that in view of Section 68 of the Wakf Act registration of FIR under Sections 406, 417 and 477-A IPC is improper, which was accepted by a learned Judge, on the

ground that non-delivery of accounts by the Mutawalli is covered by Section 68 of the Wakf Act and is not covered by Sections 406, 417 and 477 A IPC. The facts in that case are different from the facts of this case. So the said decision has no application to the facts of this case.

9. In ANANDER SHAREEF'S CASE (3 supra), it is held that inasmuch as theft of electric energy is covered by Section 44 of the Indian Electricity Act, registration of a crime under Section 378 IPC for theft of electric energy is improper. The said decision is of no help to decide this case, because none of the sections in part IV of the Act deal with a situation like the one in this case. In fact Part IV of the Act contains Sections 20 to 32. Before referring to those sections I feel it relevant to state that Section 4 of the Act, which vests in the Central Government the exclusive privilege and power to grant licences within India in respect of telegraphs, lays down that the Central Government may grant a licence on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India subject to the conditions mentioned therein. Section 20 of the Act, relates to 'Establishing, maintaining or working unauthorized telegraphs'. Section 21 relates to 'using unauthorized telegraphs'. Section 22 relates to 'opposing establishment of telegraphs on railway land'. Section 23 relates to 'Intrusion into signal room, trespass in telegraph office or obstruction'. Section 24 relates to 'unlawfully attempting to learn contents of messages'. Section 25 relates to 'Intentionally damaging or tampering with telegraphs'. Section 25-A relates to 'Injury to or interference with a telegraph line or post'. Section 26 relates to Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals'. Section 27 relates to Telegraph

officer fraudulently sending message without payment'. Section 28 relates to 'Misconduct' by telegraph officers. Section 30 relates to retaining a message delivered by mistake. Section 31 relates to 'Bribery'. Section 32 relates to 'Attempts to commit offences'.

10. As the allegation against the petitioners and others relates to their causing loss to the government revenue by colluding with the staff of telephone department, and does not relate to establishing or maintaining or working unauthorized telegraph in contravention of Section 20 of the Act, Sections 20 to 32 of the Act do not apply to the acts alleged against the petitioner.

11. Causing loss to a person by unlawful means or means which are not lawful can give raise to a cause of action for initiation of both civil and criminal proceedings. Arbitration contemplated by Section 7B of the Act relates to civil liability but not to criminal acts punishable under IPC. If the acts alleged against a person are not covered by any of the provisions of Part-IV of the Act, he can certainly be prosecuted under the provisions of IPC, if such acts are not covered by the provisions of any other special law.

12. The facts in MALLADI SEETARAM SASTRY CASE (6 supra) are entirely different from the facts of this case. In that case a subscriber of a telephone had, without the written consent of the government, allowed his telephone to be installed in the premises of another person for the business of that person. As that person failed to pay the amounts due to the subscriber, the subscriber sued for recovery of the amounts due to him as per the agreement. The actual user took a defencce that inasmuch as the

agreement between him and the subscriber is hit by Section 23 of the Contract Act, the suit is liable to be dismissed. The court held that inasmuch as the agreement between the subscriber and his lessee is contrary to the provisions of Section 20-A of the Act, it is hit by Section 23 of the Contract Act, and so he is not entitled to recover the amount claimed. Since this case does not relate to civil liability, that decision is of no help to the petitioners.

13. Question whether petitioners committed criminal breach of trust, or indulged in cheating has to be investigated into by the police. It is well known that if the allegations in the FIR, if taken to be true, disclose commission of a cognizable offence it cannot be quashed by going into the merits and demerits of the case. So I find no grounds to quash the FIR.

14. Hence, the writ petition is dismissed. No order as to costs.

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C.Y.SOMAYAJULU, J.

13th September, 2007.

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[1] AIR 1993 AP 19

[2] 2007(1)ALD(Crl.)587 AP

[3] Crl.MP.No.275 of 1971 dated 21.6.1971

[4] AIR 1968 AP, 315